

**MINUTES**  
**ZONING BOARD OF APPEALS**  
**JULY 13, 2006**

The meeting was held in Stow Town Building and was opened at 10:07 a.m. Board members present were Arthur Lowden, John Clayton, Edmund Tarnuzzer, Charles Barney (associate) and Lee Heron (associate).

**Robert & Caroline Collings** - Mr. Tarnuzzer, as chair of the hearing, opened the discussion on the application for special permit with regard to a perceived flood plain mapping error on property off Barton Road to allow construction of a single-family dwelling. Mr. Collings and Attorney Robert Dionisi were in attendance. At the July 10th meeting there had been the suggestion that Town Counsel Jon Witten be invited to attend, however, after further consideration, the members felt they had sufficient information to come to a decision.

Mr. Tarnuzzer began by reading to the members a memo addressed to the Board enumerating his findings as related to the application for special permit under Section 5.1.1.7, "Flood Plain/Wetlands District", an overlay district. The district overlaid by that district is the Recreation-Conservation District where single-family dwellings are not a permitted use. Mr. Tarnuzzer's finding is that a mapping error may have occurred but is not relevant in this instance. A special permit cannot be granted because the underlying district (Recreation-Conservation) does not allow the proposed single-family dwelling use. (A copy of the memo is included with these minutes.) A copy of the memo had been forwarded to Town Counsel for comment, and he was in agreement.

Mr. Clayton was in agreement with those findings. Reducing the matter to its smallest components, a special permit is sought pursuant to 5.1.1.7 to construct a single-family. The Board may, not must, grant a special permit to allow any use or structure otherwise permitted in the district overlaid by the Flood Plain/Wetlands District if it is clearly shown that the land intended for such use or structure is included within the Flood Plain/Wetlands District through a mapping error, or that no portion of the proposed use or structure will be below the flood plain elevation. The underlying district is what defines use, as listed in Section 3.10, "Table of Principal Uses". He remarked that his conclusion was the same of Mr. Tarnuzzer's, but arriving via a different route.

Attorney Dionisi presented a letter requesting that the application be withdrawn without prejudice. At this point, Mr. Tarnuzzer said he was inclined to render a decision rather than allow the matter to remain open. Mr. Clayton felt approval for withdrawal could be granted but with the rendering of a decision. Mr. Dionisi cited the two-year bar to a subsequent application in the case of denial. Mr. Lowden pointed out that the public hearing has been held and closed. Mr. Clayton noted that a decision could be the means of documenting the work and findings to date and that the request for special permit under 5.1.1.7 to construct a single-family dwelling has been addressed.

Mr. Dionisi wished the Board to vote on the request for withdrawal before voting on a decision. Mr. Tarnuzzer disagreed by saying that a vote to approve withdrawal would take the matter off the table. Mr. Dionisi then agreed to findings with acceptance of withdrawal. Mr. Tarnuzzer said that Town Counsel had mentioned another path in this regard may be through variance. Mr. Clayton did not agree in that the Board is dealing only with what has been applied for, i.e., a special permit under 5.1.1.7.

Mr. Tarnuzzer recognized that a lot of work has been done to this point. The property in question may be above the flood plain, but the proposed single-family use is not permitted in the underlying Recreation-Conservation District.

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Motion by Mr. Lowden that the Board consider and decide on the request of the applicant for withdrawal of the application, without prejudice; and that if the vote is in the affirmative, that the decision be accompanied by the Board's findings, and Town Counsel's if necessary, to properly define this Board's decision on the original application. Second by Mr. Barney. The vote on the motion was unanimous in favor.

This portion of the meeting was adjourned at 10:30 a.m., whereupon the members traveled to 76 Pine Point Road for a site visit.

**76 Pine Point Road - Glenn Gershon:** The members observed the locations of the deck and hot tub structure that had each been erected without a building permit. A physical measurement was taken, and it was determined that the deck is 20.5 feet away from the nearest point of the Doering residence at 74 Pine Point Road. One member observed there appeared to be remnants of the original landing below the deck. The hot tub deck was enclosed with fencing on the lot line and street sides. Mrs. Doering joined the members and indicated she had no real problem with the hot tub location.

The Board returned to the Town Building at 11:07 a.m. to discuss the findings of the site visit. Mr. Heron moved to deny variances related to the deck and to order it removed and reconstructed to its original and pre-existing footprint and condition. Second by Mr. Clayton. The vote was unanimous in favor.

With regard to the hot tub, Mr. Tarnuzzer felt those variances could be granted but with no enlargement or addition, such as a roof enclosure. Mr. Barney moved to grant variances related to the hot tub with the condition there will be no addition to it in any form. Second by Mr. Clayton. The vote was unanimous in favor.

**Adjournment** - The meeting was adjourned at 11:18 a.m.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board